

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MORPHO KOMODO, LLC

Plaintiff,

v.

**ACROPRINT TIME RECORDER
COMPANY, *et al.*,**

Defendants.

Case No. 2:15-cv-1339-JRG-RSP

CONSOLIDATED LEAD CASE

DEMAND FOR JURY TRIAL

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to the P.R. 4-3 and the Court’s Docket Control Order, Plaintiff Morpho Komodo, LLC (“Plaintiff”) and Defendants Safran USA, Inc. and MorphoTrak LLC (collectively, “Defendants”) file this Joint Claim Construction and Prehearing Statement. Exhibit A, respectively, contains Plaintiff’s and Defendants’ proposed constructions and supporting intrinsic and extrinsic evidence for each disputed claim term, phrase, or clause of the patent(s)-in-suit.

I. AGREED UPON CLAIM TERMS, PHRASES OR CLAUSES (P.R. 4-3(A))

The parties have agreed constructions to report under Local Patent Rule 4-3(a) and continue working toward potential agreed terms prior to filing of the opening claim construction brief. The agreed constructions of the following terms from U.S. Patent No. 9,026,798 (the “798 Patent”), U.S. Patent No. 7,350,078 (the “078 Patent”), and U.S. Patent No. 8,429,415 (the “415 Patent”) (collectively, the “Asserted Patents”) are as follows:

| | Claim Term | Agreed Construction | Claim No. |
|-----------|-----------------------------|--|--|
| 1. | “input device” | “a device by which a user enters input into a computer system” | 078 Patent: 1, 3, 9 415 Patent: 1, 13 798 Patent: 1, 13 |
| 2. | “measurable variable input” | “an input quantity that can vary and that must be | 078 Patent: 1, 9 |

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| | | measured, as opposed to an input that is distinctly identifiable” | |
|--|--|---|--|

II. DISPUTED CLAIM TERMS, PHRASES OR CLAUSES (P.R. 4-3(B))

Pursuant to Local Patent Rule 4-3(b), the chart attached as Exhibit A to this Joint Statement contains Plaintiff’s and Defendants’ respective proposed construction for each disputed claim, term, phrase, or clause. All parties reserve the right to rely on any evidence identified by any other party. The parties dispute the construction of the below terms from the Asserted Patents.

| | Claim Term | Claim(s) |
|-----------|---|--|
| 1. | “computing device” | 415 Patent: 1, 2, 5, 11-13 |
| 2. | “user-selected device” and “user-selected input device” | 078 Patent: 1, 9 |
| 3. | “signal” | 078 Patent: 1, 4 415 Patent: 1 798 Patent: 1 |
| 4. | “signal type” | 078 Patent: 1, 3, 9, 15 415 Patent: 1, 12, 13 798 Patent: 1, 13 |
| 5. | “signature” | 078 Patent: 1, 4, 5, 8, 9, 13, 14 415 Patent: 1, 5, 11, 12 798 Patent: 1, 5, 11 |
| 6. | “wherein said recording comprises a plurality of user-selected signal types” | 078 Patent: 15 |
| 7. | “user” | 078 Patent: 1-4, 9 415 Patent: 1, 12, 13 |

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|------------|---|---|
| | | 798 Patent: 1, 13 |
| 8. | “selectable user input device (user-selectable input device)” | 078 Patent: 1, 9 |
| 9. | “(selectable / user selected) signal types” | 078 Patent: 9 415 Patent: 1 798 Patent: 1 |
| 10. | “category... of measurable variable input” | 078 Patent: 1, 9 415 Patent: 13 798 Patent: 13 |
| 11. | “user-controllable in duration” | 078 Patent: 4 |
| 12. | “wherein a signal type comprises a category, among a plurality of possible categories, of measurable variable input associated with at least one user-selectable input device” | 078 Patent: 1 |
| 13. | “receiving user selection of at least one signal type” | 078 Patent: 3, 9 |
| 14. | “wherein said predetermined degree comprises a user-designated tolerance” | 078 Patent: 6 |
| 15. | “user-designated tolerance” | 078 Patent: 6 |
| 16. | “editing said recording” | 078 Patent: 8 |
| 17. | “selectable by user” | 415 Patent: 1 798 Patent: 1 |
| 18. | “the at least two different signal types being associated with the first or second user selectable input devices” | 415 Patent: 1 798 Patent: 1 |

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| 19. | “a second set of instructions... that are adapted to be executed after the first set of instruction has been executed” | 415 Patent: 1 798 Patent: 1 |
| 20. | “a third set of instructions... that are adapted to be executed after both the first and second sets of instructions have been executed” | 415 Patent: 1 798 Patent: 1 |
| 21. | “information processing system” | 798 Patent: 1, 2, 5, 11-13 |
| 22. | “for subsequent authentication” | 078 Patent: 1 |
| 23. | “which provides secured access” | 415 Patent: 1 798 Patent: 1 |

As shown in the above list, there are terms for which the parties submit competing constructions. In the claim chart attached as Exhibits A and B, Plaintiff and Defendants propose claim constructions for the disputed claim terms/phrases from the Asserted Patents and identify intrinsic and extrinsic evidence upon which they may rely to support their proposed constructions.

Each party expressly reserves the right (subject to the other parties’ objections, if any) to amend, correct, or supplement its claim construction positions and supporting evidence in response to any change of position by the other party, in response to information received through claim construction discovery, including inventor depositions and expert depositions concerning claim construction declarations, or for other good cause.

III. ANTICIPATED LENGTH OF TIME FOR CLAIM CONSTRUCTION HEARING (P.R. 4-3(C))

The parties have met and conferred in good faith regarding the constructions of terms and have narrowed the issues for this Court to resolve. The parties anticipate that the hearing will last approximately 3 hours.

IV. WITNESS AND EXPERTS (P.R. 4-3(D))

At this time, the parties do not anticipate calling any witnesses at the hearing.

V. OTHER ISSUES (P.R. 4-3(E))

The parties do not have any additional issues to address at the hearing.

DATED March 18, 2016.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2016, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Marshall Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Hao Ni
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